IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10927 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI KALICHARAN PATEL (BHAIYA)

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR SAMIR J DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. The order dated 31-8-2000 of the District Magistrate, Navsari, under which the petitioner was ordered to be detained as a bootlegger is challenged by him by this petition under Article 226 of the Constitution. This petition was admitted on 18-10-2000. the order of

admission reads as under:

> Rule returnable on date on which completion of four weeks from today, takes place, with a direction to the respondents to file their respective affidavits in reply, if they so desire.
>
> Office is directed to place this matter on Final Hearing Board after service of rule in seriatim as per chronological order of actual date of execution of detention order on detenu, in each case keeping in mind the Register which has been ordered to be kept and maintained.

#. Within time bound programme, this Court expected reply from the respondents. Thereafter this matter came up for consideration before this Court on 17-1-01. On that date, the matter was adjourned on the request of the counsel for the petitioner to file translation of the documents. Then the matter came up on 16-1-2001, on which date, the mater was adjourned on request of the counsel for the petitioner and then it has come up for hearing today. So there was more than three months' time at the disposal of the respondents, if they really intended, willing and desirous of filing reply to the special civil application.

#. Reply to the special civil application has not been filed and consequence thereof is whatever factual averments made by the petitioner in the petition stand uncontroverted and the same are to be accepted.

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging the order of the respondent No.2 but all those contentions are not to be referred, discussed and decided as in my view this petition deserves to be allowed only on two points, namely, (i) that the opinion formed on the basis of the statements of secret witness is not a genuine one and (ii) there is delay in deciding the representation filed by the petitioner against the detention order. Ancillary contention has also been raised that there is an unexplained delay of more than three months in passing of the order of detention from the last registered offence alleged to have been committed by the petitioner.

#. Heard the learned counsel for the parties. From the grounds of detention, I find that the last case was registered against the petitioner on 13th May, 2000. In

connection with this case, the petitioner has been arrested on 21st May, 2000 and in the case he was released on bail on 23rd May, 2000. For his detention, in addition to these three registered cases, the detaining authority has also made use of unregistered cases, statements of secret witness recorded on 1-7-2000 and 2-7-2000 and which were certified on 28-8-2000 and 29-8-2000 and on 31-8-2000, this order has been passed. So there was no sufficient time gap in between the certification of these statements of secret witnesses and the date of order of detention. Certainly on his ground, this subjective satisfaction recorded by the detaining authority vitiates. This subjective satisfaction recorded cannot be said to be genuine. No explanation has been given out why this order has been passed immediately after this secret statements were verified. Representation has been made by the petitioner on 29-9-2000 and from the document which has been produced today in the Court by the counsel for the petitioner, it appears to have been decided on or before 30-9-2000 by the State Government. From this fact, though there is no delay in deciding this representation by the State Government but there is considerable delay in communication of this order. This order received for communication to the petitioner by the jail authority on 30-10-2000, which is clearly borne out from this document, which has been produced today in the court and naturally it would have been given to the petitioner on that day or the following day. There is no explanation for this long delay in communication of the order to the petitioner and it is certainly fatal to the action of the respondents.

#. Learned counsel for the respondents contended that this delay in communication is not fatal but he has failed to show any decision of this Court or the Hon'ble Supreme Court. Decision on representation does not mean to decide the same and keep the order in pocket. This process started from the date of receipt of representation and ends only on the day on which the decision taken thereon is communicated and received by the detenu. In this present case, though so far as the first procedural part is concerned, there may not be any serious delay but so far as the second procedural part is concerned, it may be taken to be delay in deciding the representation. Unless the decision is communicated to the detenu how far it is relevant. Communication is most important of the decision taken on the representation and there is delay.

#. On both these grounds, this petition succeeds and

accordingly the same is allowed. The order of detention of the petitioner dated 31-8-2000 is quashed and set aside. The petitioner Rajubhai Kalicharan Patel (Bhaiya), the detenu, at present in Sabarmati Central Jail, Ahmedabad, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. No order as to costs.

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